

REMARKS

Claims 1, 10, 13, 22 and 32-33 were examined. Claims 34-35 are newly presented. Claims 1 and 13 are amended to more particularly point out and distinctly claim Applicants' invention.

The Examiner rejected Claims 1, 10, 13, 22 and 32-33 under 35 U.S.C. § 103(a) as being unpatentable over Japanese Patent 11-59701 ("Nakagome"), in view of U.S. Patent 6,007,246 ("Kinigakis"). The Examiner combines the teachings of Nakagome and Kinigakis, citing Kinigakis for teaching a reclosable fastener that can be placed parallel to the tear strip of Nakagome:

... Nakagome et al. especially discloses the pour spout and opening being initially accessed by a tear strip that is parallel to the first side edge. However, Nakagome et al. does not disclose the opening being reclosable by a reclosable fastener in the pour spout. Kinigakis et al. discloses that it is known in the art to provide a reclosable, zipper fastener in the pour spout of an analogous bag. Kinigakis et al. further discloses the reclosable, zipper fastener being provided such that it is parallel to weakening lines (50) that form a removable tear strip (60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pour spout of Nakagome et al. with a reclosable, zipper fastener that is parallel to the tear strip, as suggested by Kinigakis et al., in order to permit the opening to be reclosed.

Applicants respectfully submit that the Examiner is mistaken. As the Examiner points out above, Kinigakis discloses "the reclosable, zipper fastener being provided such that it is parallel to weakening lines (50) that form a removable tear strip (60)." Based on this disclosure, the Examiner suggests "[providing] the pour spout of Nakagome et al. with a reclosable, zipper fastener that is parallel to the tear strip, as suggested by Kinigakis et al., in order to permit the opening to be reclosed." However, the Examiner's suggestion not only would change the

principles of operation of both Nakagome's and Kinigakis's respective inventions, the resulting device would be satisfactory for use for neither Nakagome's nor Kinigakis's respective purposes.

First, as explained in Nakagome's paragraphs [0003-0004; 0009] (see, e.g., the translation provided by the Examiner with the present Office Action), Nakagome's invention provides the tear strip as a means for conveniently breaking the heat seal at the tip of the pour spout at a position of the pour spout where it would simultaneously allow (a) the pour spout to be completely inserted into the opening of an open container, and (b) the notched portion to stably engage the lip of a container opening, so as to prevent spillage of the material to be poured. The configuration and the function of this tear strip are demonstrated, for example, in Nakagome's Figures 1-5. The importance of this tear strip is demonstrated by its specific recitation in Nakagome's Claim 1. However, the principle of operation of Nakagome's tear strip is changed under the Examiner's suggestion, as the tear strip, under the Examiner's suggested modified configuration, would neither break the heat seal nor define the position of the pour spout for inserting completely into the container's opening and engaging the lip of such an opening. Nakagome's tear strip is no longer a convenient means of breaking the heat seal, as Kinigakis's reclosable, zipper fastener introduced by the Examiner would now maintain the heat seal. Furthermore, as explained by Kinigakis's at col. 6, line 64 to col. 7, line 6, for example, it is not sufficient to locate the reclosable, zipper fastener behind the tear strip, because additional features, such as gripping flanges (with their requisite dimensions to allow gripping by human fingers), must be formed to allow opening and closing of the reclosable, zipper fastener:

For effecting opening of the pouring spout 24, a corner segment 60 of the bag 10 is torn away at the weakening lines or perforations 50 so as to produce a pair of gripping flanges 62 adjacent to the slide fastener structure 34 which, upon being pulled apart, will cause the interengaged profile male and female elements

36, 38 to separate responsive to the exerted pulling action, and thereby open the corner dispensing or pouring spout, such that tilting of the bag 10 facilitates dispensing therefrom of any desired quantity of the product stored in the bag.

Such requirements would conflict with Nakagome's objective of having the tear strip define simultaneously the above-described optimal positions of Nakagome's pour spout and notched portion. In some applications, where the size of the container's opening is incompatible with the requisite dimensions of Kinigakis's reclosable, zipper fastener, the resulting device would be unsatisfactory in preventing spilling and to promote stability during pouring, as desired by Nakagome. Thus, the Examiner's suggested modification would change the principle of operation of Nakagome's invention and would also result in a device that would be unsatisfactory for Nakagome's intended purpose.

Second, with respect to Kinigakis's invention, the Examiner selectively ignores Kinigakis's teaching that its invention requires that the pour spout be provided at a corner oriented at an angle between 25° and 65°, unless the pour spout is "[suitably] chamfered or tapered:"

... In order to provide the novel resealable opening or closure which will impart an enhanced control over the dispensing rate of the contents or dry cereal being dispensed, the bag has the resealable corner opening in the form of a structure in which reclosable interengagable profiled slide fastener members are located at an angle or chamfer, to produce a corner pouring spout which is substantially smaller than the width of the bag.

...Pursuant to the invention, a dispensing orifice or pouring spout 24 which is of a reclosable sealable nature is formed at an upper corner 26 of the bag 10 intermediate an upper horizontal edge 28 and at least one vertical edge 30 of the side walls 16, such corner pouring spout or dispensing orifice 24 subtending an angle within the range of approximately 25° to 65°, with respectively the upper horizontal and the vertical side edges 28, 30 of the bag corner 26, although it is possible to contemplate

that other angles may be formed by a suitable chamfered or tapered corner pouring spout, as may be desired for the particular contents which are to be stored in the bag and dispensed therefrom...

(emphasis added; Kinigakis at col. 3, lines 57-65 and at col. 5, line 65 to col. 6, line 9)

Because Nakagome teaches a tear strip along weakened lines 7-7', which is parallel the vertical opening of pour sprout 6, under the Examiner's combination of Nakagome's and Kinigakis's teachings, the resulting pour spout would not result in a corner pouring spout that satisfies the angular requirement of Kinigakis. Thus, the Examiner's suggested modification (a) would render the resulting structure not satisfactory for Kinigakis's intended purpose (i.e., the resulting structure does not have Kinigakis's desired enhanced control over the dispensing rate, as taught in Kinigakis's col. 3, lines 57-65), and (b) would change Kinigakis's principle of operation (i.e., "[providing] the resealable corner opening in the form of a structure in which reclosable interengagable profiled slide fastener members are located at an angle or chamfer").

As explained in MPEP §§ 2143.01(V) and 2143.01(VI), a modification that changes the principle of operation of a prior art device in a reference, or renders the prior art to be unsuitable for its intended purpose, is neither suggested nor motivated by the prior art and, even when so modified, would not be sufficient to render the claims *prima facie* obvious.

In response to Applicants' previous arguments of July 12, 2010, regarding the Examiner's combination of teachings, the Examiner states:

In response to applicant's argument that the Examiner's suggested modification would render the resulting structure unsatisfactory for its intended purpose and change Nakagome's principle operation, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the


references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In this case, Kinigakis suggests to a person having ordinary skill in the art that it is desirable provide a reclosable, zipper fastener in the pour spout of a dispensing bag

Applicants respectfully submit that the Examiner is mistaken regarding Kinigakis's teachings. In this instance, as shown in the quoted portions of Kinigakis above, because Kinigakis teaches that an orientation of the corner pour spout within a requisite angular range is integral to its invention, Kinigakis suggests to a person having ordinary skill in the art that it is desirable to provide a reclosable, zipper fastener in the pour spout of a dispensing bag that is oriented within the angular range between 25° and 65°, or suitably chamfered. Therefore, the combined teachings of Nakagome and Kinigakis would meet neither Claim 1's limitations of "... wherein the first side edge is substantially straight ... being substantially perpendicular to and longer than the bottom end, and ...a pour spout located along ... substantially parallel to the first side edge," nor Claim 13's limitations of " ... the first side edge (a) being substantially straight, ... and (c) being substantially perpendicular to and longer than the bottom end; and ...a reclosable fastener provided over a reclosable opening ... being substantially vertical when the bag is placed in the generally upright position."

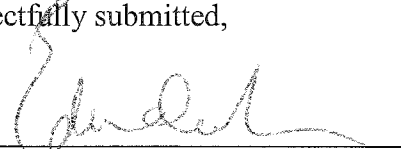
Accordingly, Applicants submit that Claims 1 and 13 and their respective dependent Claims 10, 22 and 31-32 are each allowable over the combined teachings of Nakagome and Kinigakis. Reconsideration and allowance of Claims 1, 10, 13, 22 and 32-33 are therefore requested.

Newly presented Claims 34-35 are believed allowable at least for the reasons set forth above.

For the reasons set forth above, all claims (i.e., Claims 1, 10, 13, 22, and 32-35) are now believed to be in condition for allowance. If the Examiner has any questions regarding the above, the Examiner is requested to call Applicants' attorney at 408-660-4149.

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